

AMENDED IN ASSEMBLY APRIL 24, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 2809

Introduced by Assembly Member Robert Pacheco
*(Principal coauthors: Assembly Members Aanestad, Bates,
Vincent, and Wright)*
*(Coauthors: Assembly Members Battin, Campbell, Cox,
Cunneen, and Runner)*
(Coauthors: Senators Leslie and Monteith)

February 28, 2000

An act to amend Sections 120990, 125085, 125090, and 125100 of, and to repeal Section 125107 of, 125100, and 125107 of the Health and Safety Code, relating to HIV testing.

LEGISLATIVE COUNSEL'S DIGEST

AB 2809, as amended, Robert Pacheco. Human immunodeficiency virus (HIV): maternal and newborn health.

Existing law requires a physician and surgeon to obtain a blood specimen from a pregnant woman before or at the time of delivery. Existing law requires the blood specimen to be tested for rhesus (Rh) blood type and the presence of the hepatitis B surface antigen.

~~This bill would require that the blood specimen also be tested for the presence of antibodies to the human immunodeficiency virus or HIV. This bill would authorize a pregnant woman to refuse HIV testing if she has been determined to be chronically infected with HIV or if a~~

~~medical professional explains the purpose of testing and the currently approved treatments.~~

Existing law specifies that the requirement for the test of a pregnant woman's blood sample to determine the presence of the hepatitis B surface antigen does not apply in circumstances where the physician and surgeon or other person engaged in the prenatal care of the pregnant woman or attending that woman at the time of delivery has knowledge that the woman has previously been determined to be chronically infected with hepatitis B and accepts responsibility for the accuracy of the information.

This bill would revise that exclusion to refer also to infection with HIV, and would delete the requirement that the infection be chronic.

The bill would also authorize a pregnant woman to refuse testing for HIV after receiving counseling on HIV from the prenatal care provider primarily responsible for providing prenatal care to the pregnant woman.

Existing law generally prohibits the testing of blood for HIV without the written consent of the subject.

This bill would make that prohibition inapplicable to the testing of the blood of a pregnant woman.

Existing law requires specified medical entities and professionals to maintain and make information available to the State Department of Health Services regarding testing, treatment, and prevention of perinatally transmitted hepatitis B. Existing law requires the department to make funds available to requesting counties for testing, treatment, and prevention of hepatitis B.

This bill would *also* require specified medical entities and professionals to maintain and make information available to the department regarding testing, treatment, and prevention of HIV~~and hepatitis B~~. This bill would *also* require the department to make funds available to requesting counties for testing, treatment, and prevention of HIV~~and hepatitis B~~.

Existing law requires prenatal care providers, as defined, *who are primarily responsible for providing prenatal care to a pregnant patient* to offer a HIV test, information, counseling, and referral services that include providing

certain information to every pregnant woman patient during prenatal care.

~~This bill would delete this provision~~ *require that the information and counseling that is provided under these provisions be provided as early in the patient's pregnancy as is practical, or at the time of labor or delivery with any test approved by the federal Food and Drug Administration that will ensure results will be available to the provider within a 24-hour period, would require that certain additional information be provided when HIV tests are offered under these provisions, and would extend the requirements to provide information and counseling and offer an HIV test to apply to other health care providers approved by the department. The bill would also require certain prenatal care providers to verify HIV-related information in the medical files of the patient and provide posttest counseling in cases in which HIV tests are positive.*

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of
2 the following:

3 (a) The human immunodeficiency virus (HIV)
4 infection rate among women of childbearing years is
5 estimated at 0.6 per 1,000. Universal testing of pregnant
6 women could prevent the perinatal transmission of HIV
7 to the newborn since treatment before or at the time of
8 labor and delivery can prevent transmission to the
9 newborn.

10 (b) A study conducted by the National Institutes of
11 Health (NIH) has shown that treatment of pregnant
12 women with zidovudine (AZT) can reduce transmission
13 of HIV from 25 percent to less than 8 percent.

14 (c) Another NIH study, concluded in 1999, has shown
15 a further reduction of transmission of HIV to
16 approximately 2 percent with a single dose of nevirapine
17 administered at the time of labor and delivery and to the
18 newborn after delivery.

(d) The cost of an HIV test in the standard prenatal panel is estimated to cost three dollars (\$3) to five dollars (\$5). The average total lifetime charges for the care of a child with HIV infection is estimated at four hundred ninety-one thousand nine hundred thirty-six dollars (\$491,936), making early detection through universal HIV screening of pregnant women a cost-effective policy.

SEC. 2. *Section 120990 of the Health and Safety Code is amended to read:*

120990. (a) Except in the case of a person treating a patient, no person shall test a person's blood for evidence of antibodies to the probable causative agent of AIDS without the written consent of the subject of the test or the written consent of the subject, as provided in Section 121020, and the person giving the test shall have a written statement signed by the subject or conservator or other person, as provided in Section 121020 confirming that he or she obtained the consent from the subject. In the case of a physician and surgeon treating a patient, the consent required under this subdivision shall be informed consent, by the patient, conservator, or other person provided for in Section 121020.

This requirement does not apply to a test performed at an alternative site, as established pursuant to Sections 120885 to 120895, inclusive. This requirement also does not apply to any blood and blood products specified in paragraph (2) of subdivision (a) of Section 1603.1. This requirement does not apply when testing is performed as part of the medical examination performed pursuant to Section 7152.5. *This requirement does not apply when testing a pregnant woman pursuant to Section 125080.*

(b) Nothing in this section shall preclude a medical examiner or other physician from ordering or performing a blood test to detect antibodies to the probable causative agent of AIDS on a cadaver when an autopsy is performed or body parts are donated pursuant to the Uniform Anatomical Gift Act, provided for pursuant to Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7.

(c) The requirements of subdivision (a) do not apply when blood is tested as part of a scientific investigation

1 conducted either by medical researchers operating
2 under institutional review board approval or by the
3 department in accordance with a protocol for unlinked
4 testing. For purposes of this section, unlinked testing
5 means that blood samples are obtained anonymously or
6 that the individual's name and other identifying
7 information is removed in a manner that precludes the
8 test results from ever being linked to a particular
9 individual in the study.

10 *SEC. 3.* Section 125085 of the Health and Safety Code
11 is amended to read:

12 125085. (a) A blood specimen obtained pursuant to
13 Section 125080 shall be submitted to a clinical laboratory
14 licensed by the department or to an approved public
15 health laboratory for a determination of rhesus (Rh)
16 blood type and the results shall be reported to both of the
17 following:

18 (1) The physician and surgeon or other person
19 engaged in the prenatal care of the woman or attending
20 the woman at the time of delivery.

21 (2) The woman tested.

22 (b) In addition, a blood specimen obtained pursuant to
23 Section 125080 shall be submitted to a clinical laboratory
24 licensed by the department or to an approved public
25 health laboratory for a test to determine the presence of
26 hepatitis B surface antigen and the human
27 immunodeficiency virus (HIV). In the event that other
28 tests to determine hepatitis B infection or HIV infection
29 become available, the department may approve
30 additional tests.

31 ~~SEC. 3.~~

32 *SEC. 4.* Section 125090 of the Health and Safety Code
33 is amended to read:

34 125090. (a) Subdivision (a) of Section 125085 shall
35 not be applicable if the licensed physician and surgeon or
36 other person engaged in the prenatal care of a pregnant
37 woman or attending the woman at the time of delivery
38 has knowledge of the woman's blood type and accepts
39 responsibility for the accuracy of the information.

(b) Subdivision (b) of Section 125085 shall not be applicable if the licensed physician and surgeon or other person engaged in the prenatal care of a pregnant woman or attending the woman at the time of delivery has knowledge that the woman has previously been determined to be ~~chronically~~ infected with hepatitis B or *infected with the* human immunodeficiency virus (HIV) and accepts responsibility for the accuracy of the information.

(c) A pregnant woman may refuse testing for HIV on a blood specimen collected pursuant to Section 125080 ~~after the purpose of the testing including the risk of perinatal transmission and any currently approved treatment known to prevent perinatal transmission of HIV is explained by a licensed physician and surgeon engaged in the prenatal care of a pregnant woman or attending the woman at the time of delivery. Any refusal of testing for HIV shall be in writing and shall be maintained in the medical record.~~

~~SEC. 4.~~ *after receiving the information and counseling described in subdivision (b) of Section 125107.*

SEC. 5. Section 125100 of the Health and Safety Code is amended to read:

125100. (a) Clinical laboratories licensed by the department, approved public health laboratories, local health departments, physicians and surgeons, or other persons engaged in the prenatal care of a pregnant woman or in the care of an infant shall maintain and make available to the department information necessary to evaluate, for public health purposes, the effectiveness of testing and followup treatment for the prevention of perinatally transmitted hepatitis B infection and perinatally transmitted human immunodeficiency virus (HIV) infection.

(b) The department shall make available, to the extent state funds are appropriated therefor in the annual Budget Act or federal funds are available for that purpose, money to each county requesting funds for testing and followup treatment for the prevention of perinatally transmitted hepatitis B infection or

1 perinatally transmitted HIV infection or for any functions
2 performed pursuant to subdivision (a). The money shall
3 be allocated by the department on the basis of the
4 incidence of perinatally transmitted hepatitis B infection
5 and the incidence of perinatally transmitted HIV and the
6 need for necessary followup treatment and evaluation in
7 the requesting county.

8 ~~SEC. 5. Section 125107 of the Health and Safety Code~~
9 ~~is repealed.~~

10 *SEC. 6. Section 125107 of the Health and Safety Code*
11 *is amended to read:*

12 125107. (a) For purposes of this section, “prenatal
13 care provider” means a licensed health care professional
14 providing prenatal care within his or her lawful scope of
15 practice. This definition shall not include a licensed
16 health care professional who provides care other than
17 prenatal care to a pregnant patient.

18 (b) The prenatal care provider primarily responsible
19 for providing prenatal care to a pregnant patient *or*
20 *another health care provider approved by the State*
21 *Department of Health Services* shall offer human
22 immunodeficiency virus (HIV) information and
23 counseling to every pregnant patient *as early in the*
24 *patient's pregnancy as is practical, or at the time of labor*
25 *or delivery with any test approved by the Food and Drug*
26 *Administration that will ensure that results will be*
27 *available to the provider within a 24-hour period.* This
28 information and counseling shall include, but shall not be
29 limited to, all of the following:

30 (1) A description of the modes of HIV transmission.

31 (2) A discussion of risk reduction behavior
32 modifications including methods to reduce the risk of
33 perinatal transmission.

34 (3) Referral information to other HIV prevention and
35 psychosocial services, if appropriate, including
36 anonymous and confidential test sites approved by the
37 Office of AIDS of the State Department of Health
38 Services.

39 (4) *The treatment that is currently approved that has*
40 *been shown to prevent or reduce the perinatal*

1 *transmission of HIV from an infected mother to a*
2 *newborn.*

3 (c) The prenatal care provider primarily responsible
4 for providing prenatal care to a pregnant patient *or*
5 *another health care provider approved by the State*
6 *Department of Health Services* shall offer an HIV test as
7 defined in Section 120775 to every pregnant patient,
8 unless a positive HIV test result is already documented in
9 the patient's medical record or the patient has AIDS as
10 diagnosed by a physician. The offering of an HIV test shall
11 include discussion of all of the following:

12 (1) The purpose of the test.

13 (2) The risks and benefits of the test.

14 (3) The voluntary nature of the test.

15 (d) If the pregnant woman voluntarily consents to
16 testing, the provider shall arrange for HIV testing directly
17 or by referral, including, but not limited to, referral to
18 anonymous and confidential test sites approved by the
19 Office of AIDS of the State Department of Health
20 Services.

21 (e) The prenatal care provider primarily responsible
22 for providing prenatal care to a pregnant patient *or*
23 *another health care provider approved by the State*
24 *Department of Health Services* shall document in the
25 patient's medical record that HIV information and
26 counseling has been offered. The prenatal care provider
27 *or another health care provider approved by the State*
28 *Department of Health Services* shall also document the
29 offering of the HIV antibody test in the patient's medical
30 record.

31 (f) *The perinatal care provider responsible for*
32 *providing care to a pregnant patient at the time of labor*
33 *and delivery shall at the time of labor and delivery verify*
34 *that the medical record documents that the pregnant*
35 *patient has been offered HIV counseling and testing or*
36 *that an HIV test result is documented in the patient's*
37 *medical record.*

38 (g) *Should a pregnant patient test positive for HIV,*
39 *the prenatal care provider primarily responsible for*
40 *providing prenatal care to the pregnant patient shall*

1 *provide the posttest counseling. The posttest counseling*
2 *shall include all appropriate referrals for medical*
3 *treatment and psychosocial services needed for the*
4 *mother and the newborn. The posttest counseling shall*
5 *also include referrals for evaluation and medical care, if*
6 *appropriate, for the newborn to a medical center with*
7 *appropriate specialty services that are approved by the*
8 *department.*

9 (h) Nothing in this section shall be construed to
10 require testing, the documentation or disclosure of
11 whether the patient had an HIV test, or the result of an
12 HIV test except to the patient *or to the department*
13 *pursuant to subdivision (a) of Section 125100.* Any
14 documentation or disclosure of HIV related information
15 shall be made in accordance with Chapter 7
16 (commencing with Section 120975) of Part 4 of Division
17 105 regarding confidentiality and informed consent.

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19 CORRECTIONS

20 **Digest — Page 1,2 & 3.**

21 **Text — Pages 6.**
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